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HOUSE BILL 317

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO EXECUTIVE REORGANIZATION; TRANSFERRING THE PURCHASING DIVISION FROM THE GENERAL SERVICES DEPARTMENT TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; CREATING THE STATE PERSONNEL DIVISION IN THE DEPARTMENT OF FINANCE AND ADMINISTRATION; TRANSFERRING THE PERSONNEL BOARD AND THE STATE PERSONNEL OFFICE TO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; REPEALING SECTIONS 9-17-6 AND 10-9-11 NMSA 1978 (BEING LAWS 1983, CHAPTER 301, SECTION 6 AND LAWS 1977, CHAPTER 247, SECTION 47, AS AMENDED).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 9-6-3 NMSA 1978 (being Laws 1977, Chapter 247, Section 3, as amended) is amended to read:

"9-6-3. DEPARTMENT OF FINANCE AND ADMINISTRATION-- CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND .175380.4

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1 CREATION OF DIVISIONS.--

2 A. The "department of finance and administration"
3 is created. The department shall consist of those divisions
4 created by law or executive order, as modified by executive
5 order pursuant to Subsection C of this section, including but
6 not limited to:

- 7 (1) the board of finance division;
8 (2) the financial control division;
9 (3) the local government division;
10 (4) the management and contracts review
11 division; [~~and~~]
12 (5) the state budget division;
13 (6) the purchasing division; and
14 (7) the state personnel division, which shall
15 be comprised of the personnel board and the state personnel
16 office pursuant to the Personnel Act.

17 B. The secretary is empowered to organize the
18 department and the divisions thereof specified in Subsection A
19 of this section and may transfer or merge functions between
20 divisions in the interest of efficiency and economy.

21 C. The governor is empowered to merge divisions of
22 the department or to create additional divisions by executive
23 order in the interest of efficiency and economy."

24 Section 2. Section 9-17-3 NMSA 1978 (being Laws 1983,
25 Chapter 301, Section 3, as amended) is amended to read:

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1 "9-17-3. GENERAL SERVICES DEPARTMENT--CREATION--TRANSFER
2 AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF
3 DIVISIONS.--

4 A. The "general services department" is created.
5 The department shall consist of those divisions created by law
6 or executive order, as modified by executive order pursuant to
7 Subsection C of this section, including:

- 8 (1) the administrative services division;
9 (2) the building services division;
10 (3) the property control division;
11 [~~(4)~~ the purchasing division;
12 ~~(5)~~] (4) the risk management division; and
13 [~~(6)~~] (5) the transportation services
14 division.

15 B. The secretary of general services is empowered
16 to organize the department and the divisions specified in
17 Subsection A of this section and may transfer or merge
18 functions between divisions in the interest of efficiency and
19 economy.

20 C. The governor is empowered to merge divisions of
21 the department or to create additional divisions by executive
22 order in the interest of efficiency or economy."

23 Section 3. Section 10-9-3 NMSA 1978 (being Laws 1961,
24 Chapter 240, Section 3) is amended to read:

25 "10-9-3. DEFINITIONS.--As used in the Personnel Act:

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1 A. "director" [~~means the personnel director~~] or
2 "personnel director" means the director of the state personnel
3 division of the department of finance and administration;

4 B. "board" means the personnel board;

5 C. "service" means the state personnel service
6 created by the Personnel Act and includes all positions covered
7 by the Personnel Act;

8 D. "position" means any state office, job or
9 position of employment;

10 E. "employer" means any authority having power to
11 fill positions in an agency;

12 F. "agency" means any state department, bureau,
13 division, branch or administrative group [~~which~~] that is under
14 the same employer;

15 G. "class" means a group of positions similar
16 enough in powers and responsibilities that they can be covered
17 by the same qualifications and rate of pay;

18 H. "test" means a test of the qualifications,
19 fitness and ability and includes tests that are written, oral,
20 physical or in the form of a demonstration of skill or any
21 combination thereof;

22 I. "employee" means a person in a position in the
23 service who has completed [~~his~~] the probationary period for
24 that position; and

25 J. "probationer" means a person in a position in

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1 the service who is still in the probationary period for that
2 position."

3 Section 4. Section 10-9-8 NMSA 1978 (being Laws 1961,
4 Chapter 240, Section 5, as amended) is amended to read:

5 "10-9-8. PERSONNEL BOARD--APPOINTMENT.--

6 A. The "personnel board" is created and shall be
7 composed of five members, appointed by the governor and
8 confirmed by the senate, who shall serve staggered terms of
9 five years each with one board member's term expiring each
10 year. No person shall be a member of the board or eligible for
11 appointment to the board who is an employee in the service,
12 holds political office or is an officer of a political
13 organization.

14 B. The board is established in connection with the
15 state personnel division of the department of finance and
16 administration. The secretary of finance and administration,
17 with the approval of the board, shall appoint a director of the
18 division. This subsection shall not be construed to affect the
19 exercise of any board power or duty nor shall it be construed
20 as placing the board under the provisions of the Executive
21 Reorganization Act or the provisions of Section 9-6-5 NMSA
22 1978."

23 Section 5. Section 10-9-10 NMSA 1978 (being Laws 1961,
24 Chapter 240, Section 7, as amended) is amended to read:

25 "10-9-10. BOARD DUTIES.--The board shall:

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- 1 A. promulgate regulations to effectuate the
2 Personnel Act;
- 3 B. hear appeals and make recommendations to
4 employers;
- 5 C. [~~hire, with the approval of the governor, a~~
6 ~~director~~] approve or disapprove the appointment by the
7 secretary of finance and administration of a director of the
8 state personnel division of the department of finance and
9 administration experienced in the field of personnel
10 administration;
- 11 D. review budget requests prepared by the director
12 for the operation of the personnel program and make appropriate
13 recommendations thereon;
- 14 E. make investigations, studies and audits
15 necessary to the proper administration of the Personnel Act;
- 16 F. make an annual report to the governor at the end
17 of each fiscal year;
- 18 G. establish and maintain liaison with the [~~general~~
19 ~~services~~] department of finance and administration; and
- 20 H. represent the public interest in the improvement
21 of personnel administration in the system."

22 Section 6. Section 13-1-37 NMSA 1978 (being Laws 1984,
23 Chapter 65, Section 10) is amended to read:

24 "13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--
25 "Central purchasing office" means that office or officer within
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1 a state agency or a local public body responsible for the
2 control of procurement of items of tangible personal property,
3 services or construction. "Central purchasing office" includes
4 the purchasing division of the [~~general services~~] department of
5 finance and administration and the state purchasing agent."

6 Section 7. Section 13-1-86 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 59) is amended to read:

8 "13-1-86. DEFINITION--SECRETARY.--"Secretary" means the
9 secretary of [~~general services~~] finance and administration."

10 Section 8. Section 13-1-90 NMSA 1978 (being Laws 1984,
11 Chapter 65, Section 63) is amended to read:

12 "13-1-90. DEFINITION--STATE AGENCY.--"State agency" means
13 any department, commission, council, board, committee,
14 institution, legislative body, agency, government corporation,
15 educational institution or official of the executive,
16 legislative or judicial branch of the government of this state.
17 "State agency" includes the purchasing division of the [~~general~~
18 ~~services~~] department of finance and administration and the
19 state purchasing agent but does not include local public
20 bodies."

21 Section 9. Section 13-1-92 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 65) is amended to read:

23 "13-1-92. DEFINITION--STATE PURCHASING AGENT.--"State
24 purchasing agent" means the director of the purchasing division
25 of the [~~general services~~] department of finance and

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1 administration."

2 Section 10. Section 13-1-95 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 68) is amended to read:

4 "13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS
5 STATE PURCHASING AGENT--APPOINTMENT--DUTIES.--

6 A. The "purchasing division" is created within the
7 [~~general services~~] department of finance and administration.

8 B. Subject to the authority of the secretary, the
9 state purchasing agent shall be the administrator and chief
10 executive of the purchasing division. The state purchasing
11 agent shall be appointed by the secretary with the approval of
12 the governor.

13 C. The purchasing division and state purchasing
14 agent shall be responsible for the procurement of services,
15 construction and items of tangible personal property for all
16 state agencies except as otherwise provided in the Procurement
17 Code and shall administer the Procurement Code for those state
18 agencies not excluded from the requirement of procurement
19 through the state purchasing agent.

20 D. The state purchasing agent shall have the
21 following additional authority and responsibility to:

22 (1) recommend procurement regulations to the
23 secretary;

24 (2) establish and maintain programs for the
25 development and use of procurement specifications and for the

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1 inspection, testing and acceptance of services, construction
2 and items of tangible personal property;

3 (3) cooperate with the state budget division
4 of the department of finance and administration in the
5 preparation of statistical data concerning the acquisition and
6 [~~usage~~] use of all services, construction and items of tangible
7 personal property by state agencies;

8 (4) require state agencies to furnish reports
9 concerning [~~usage~~] use, needs and stocks on hand of items of
10 tangible personal property and [~~usage~~] use and needs for
11 services or construction;

12 (5) prescribe, with consent of the secretary,
13 forms to be used by state agencies to requisition and report
14 the procurement of items of tangible personal property,
15 services and construction;

16 (6) provide information to state agencies and
17 local public bodies concerning the development of
18 specifications, quality control methods and other procurement
19 information; and

20 (7) collect information concerning procurement
21 matters, quality and quality control of commonly used services,
22 construction and items of tangible personal property.

23 E. The state purchasing agent shall, upon the
24 request of the central purchasing office of a local public
25 body, procure a price agreement for the requested services,

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1 construction or items of tangible personal property."

2 Section 11. Section 13-1-100.1 NMSA 1978 (being Laws
3 1997, Chapter 171, Section 3) is amended to read:

4 "13-1-100.1. CONSTRUCTION CONTRACTS--CONSTRUCTION
5 MANAGEMENT SERVICES.--

6 A. A construction management services contract may
7 be entered into for any construction or state or local public
8 works project when a state agency or local public body makes a
9 determination that it is in the public's interest to utilize
10 construction management services. Construction management
11 services shall not duplicate and are in addition to the normal
12 scope of separate architect or engineer contracts, the need for
13 which may arise due to the complexity or unusual requirements
14 of a project as requested by a state agency or local public
15 body.

16 B. To [~~insure~~] ensure fair, uniform, clear and
17 effective procedures that will strive for the delivery of a
18 quality project, on time and within budget, the secretary, in
19 consultation with the secretary of general services and in
20 conjunction with the appropriate and affected professional
21 associations and contractors, shall promulgate [~~regulations~~
22 rules, which shall be adopted by the governing bodies of all
23 using agencies and shall be followed by all using agencies when
24 procuring construction management services as authorized in
25 Subsection A of this section.

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1 C. A state agency shall make the decision on a
2 construction management services contract for a state public
3 works project, and a local public body shall make that decision
4 for a local public works project. A state agency shall not
5 make the decision on a construction management services
6 contract for a local public works project."

7 Section 12. Section 13-1-119.1 NMSA 1978 (being Laws
8 1997, Chapter 171, Section 5, as amended) is amended to read:

9 "13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN
10 AND BUILD PROJECTS AUTHORIZED.--

11 A. Except for road and highway construction or
12 reconstruction projects, a design and build project delivery
13 system may be authorized when the state purchasing agent or a
14 central purchasing office makes a determination in writing that
15 it is appropriate and in the best interest of the state or
16 local public body to use the system on a specific project with
17 a maximum allowable construction cost of more than ten million
18 dollars (\$10,000,000). The determination shall be issued only
19 after the state purchasing agent or a central purchasing office
20 has taken into consideration the following criteria, which
21 shall be used as the minimum basis in determining when to use
22 the design and build process:

23 (1) the extent to which the project
24 requirements have been or can be adequately defined;

25 (2) time constraints for delivery of the

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1 project;

2 (3) the capability and experience of potential
3 teams with the design and build process;

4 (4) the suitability of the project for use of
5 the design and build process as concerns time, schedule, costs
6 and quality; and

7 (5) the capability of the using agency to
8 manage the project, including experienced personnel or outside
9 consultants, and to oversee the project with persons who are
10 familiar with the design and build process.

11 B. When a determination has been made by the state
12 purchasing agent or a central purchasing office that it is
13 appropriate to use a design and build project delivery system,
14 the design and build team shall include, as needed, a New
15 Mexico registered engineer or architect and a contractor
16 properly licensed in New Mexico for the type of work required.

17 C. Except as provided in Subsections F and G of
18 this section, for each proposed state or local public works
19 design and build project, a two-phase procedure for awarding
20 design and build contracts shall be adopted and shall include
21 at a minimum the following:

22 (1) during phase one, and prior to
23 solicitation, documents shall be prepared for a request for
24 qualifications by a registered engineer or architect, either
25 in-house or selected in accordance with Sections 13-1-120

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1 through 13-1-124 NMSA 1978, and shall include minimum
2 qualifications, a scope of work statement and schedule,
3 documents defining the project requirements, the composition of
4 the selection committee and a description of the phase-two
5 requirements and subsequent management needed to bring the
6 project to completion. Design and build qualifications of
7 responding firms shall be evaluated and a maximum of five firms
8 shall be short-listed in accordance with technical and
9 qualifications-based criteria; and

10 (2) during phase two, the short-listed firms
11 shall be invited to submit detailed specific technical concepts
12 or solutions, costs and scheduling. Unsuccessful firms may be
13 paid a stipend to cover proposal expenses. After evaluation of
14 these submissions, selection shall be made and the contract
15 awarded to the highest-ranked firm.

16 D. Except as provided in Subsections F and G of
17 this section, to ensure fair, uniform, clear and effective
18 procedures that will strive for the delivery of a quality
19 project on time and within budget, the secretary, in
20 consultation with the secretary of general services and in
21 conjunction with the appropriate and affected professional
22 associations and contractors, shall promulgate rules applicable
23 to all using agencies, which shall be followed by all using
24 agencies when procuring a design and build project delivery
25 system.

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1 E. A state agency shall make the decision on a
2 design and build project delivery system for a state public
3 works project, and a local public body shall make that decision
4 for a local public works project. A state agency shall not
5 make the decision on a design and build project delivery system
6 for a local public works project.

7 F. The requirements of Subsections C and D of this
8 section and the minimum construction cost requirement of
9 Subsection A of this section do not apply to a design and build
10 project delivery system and the services procured for the
11 project if:

12 (1) the maximum allowable construction cost of
13 the project is four hundred thousand dollars (\$400,000) or
14 less; and

15 (2) the only requirement for architects,
16 engineers, landscape architects or surveyors is limited to
17 either site improvements or adaptation for a pre-engineered
18 building or system.

19 G. The procurement of a design and build project
20 delivery system qualifying for exemptions pursuant to
21 Subsection F of this section, including the services of any
22 architect, engineer, landscape architect, construction manager
23 or surveyor needed for the project, shall be accomplished by
24 competitive sealed bids pursuant to Sections 13-1-102 through
25 13-1-110 NMSA 1978."

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1 Section 13. Section 13-1-120 NMSA 1978 (being Laws 1984,
2 Chapter 65, Section 93, as amended) is amended to read:

3 "13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED
4 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
5 SURVEYORS--SELECTION PROCESS.--

6 A. For each proposed state public works project,
7 local public works project or construction management contract,
8 the architect, engineer, landscape architect, construction
9 management and surveyor selection committee, [~~state highway~~
10 ~~and~~] department of transportation [~~department~~] selection
11 committee or local selection committee, as appropriate, shall
12 evaluate statements of qualifications and performance data
13 submitted by at least three businesses in regard to the
14 particular project and may conduct interviews with and may
15 require public presentation by all businesses applying for
16 selection regarding their qualifications, their approach to the
17 project and their ability to furnish the required services.

18 B. The appropriate selection committee shall
19 select, ranked in the order of their qualifications, no less
20 than three businesses deemed to be the most highly qualified to
21 perform the required services, after considering the following
22 criteria, together with any criteria, except price, established
23 by the using agency authorizing the project:

24 (1) specialized design and technical
25 competence of the business, including a joint venture or

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1 association, regarding the type of services required;

2 (2) capacity and capability of the business,
3 including any consultants, their representatives,
4 qualifications and locations, to perform the work, including
5 any specialized services, within the time limitations;

6 (3) past record of performance on contracts
7 with government agencies or private industry with respect to
8 such factors as control of costs, quality of work and ability
9 to meet schedules;

10 (4) proximity to or familiarity with the area
11 in which the project is located;

12 (5) the amount of design work that will be
13 produced by a New Mexico business within this state;

14 (6) the volume of work previously done for the
15 entity requesting proposals [~~which~~] that is not seventy-five
16 percent complete with respect to basic professional design
17 services, with the objective of effecting an equitable
18 distribution of contracts among qualified businesses and of
19 assuring that the interest of the public in having available a
20 substantial number of qualified businesses is protected;
21 provided, however, that the principle of selection of the most
22 highly qualified businesses is not violated; and

23 (7) notwithstanding any other provisions of
24 this subsection, price may be considered in connection with
25 construction management contracts, unless the services are

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1 those of an architect, engineer, landscape architect or
2 surveyor.

3 C. Notwithstanding the requirements of Subsections
4 A and B of this section, if fewer than three businesses have
5 submitted a statement of qualifications for a particular
6 project, the appropriate committee may:

7 (1) rank in order of qualifications and submit
8 to the secretary or local governing authority of the public
9 body for award those businesses [~~which~~] that have submitted a
10 statement of qualifications. The secretary shall consult with
11 the secretary of general services prior to making an award; or

12 (2) recommend termination of the selection
13 process pursuant to Section 13-1-131 NMSA 1978 and sending out
14 of new notices of the resolicitation of the proposed
15 procurement pursuant to Section 13-1-104 NMSA 1978. Any
16 proposal received in response to the terminated solicitation is
17 not public information and shall not be made available to
18 competing offerors.

19 D. The names of all businesses submitting proposals
20 and the names of all businesses, if any, selected for interview
21 shall be public information. After an award has been made, the
22 appropriate selection committee's final ranking and evaluation
23 scores for all proposals shall become public information.
24 Businesses [~~which~~] that have not been selected for contract
25 award shall be so notified in writing within fifteen days after

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1 an award is made."

2 Section 14. Section 13-1-122 NMSA 1978 (being Laws 1984,
3 Chapter 65, Section 95, as amended) is amended to read:

4 "13-1-122. COMPETITIVE SEALED QUALIFICATIONS-BASED
5 PROPOSALS--AWARD OF ARCHITECT, ENGINEERING, LANDSCAPE ARCHITECT
6 AND SURVEYING CONTRACTS.--The secretary, in consultation with
7 the secretary of general services, or [~~his~~] the secretary's
8 designee or the secretary of [~~the highway and~~] transportation
9 [~~department~~] or [~~his~~] that secretary's designee or a designee
10 of a local public body shall negotiate a contract with the
11 highest qualified business for the architectural, landscape
12 architectural, engineering or surveying services at
13 compensation determined in writing to be fair and reasonable.
14 In making this decision, the secretary or [~~his~~] the secretary's
15 designee or the secretary of transportation or that secretary's
16 designee or the designee of a local public body shall take into
17 account the estimated value of the services to be rendered and
18 the scope, complexity and professional nature of the services.
19 Should the secretary or [~~his~~] the secretary's designee or the
20 secretary of transportation or that secretary's designee or the
21 designee of a local public body be unable to negotiate a
22 satisfactory contract with the business considered to be the
23 most qualified at a price determined to be fair and reasonable,
24 negotiations with that business shall be formally terminated.
25 The secretary or [~~his~~] the secretary's designee or the

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1 secretary of transportation or that secretary's designee or the
2 designee of a local public body shall then undertake
3 negotiations with the second most qualified business. Failing
4 accord with the second most qualified business, the secretary
5 or ~~his~~ the secretary's designee or the secretary of
6 transportation or that secretary's designee or a designee of a
7 local public body shall formally terminate negotiations with
8 that business. The secretary or ~~his~~ the secretary's designee
9 or the secretary of transportation or that secretary's designee
10 or the designee of the local public body shall then undertake
11 negotiations with the third most qualified business. Should
12 the secretary or ~~his~~ the secretary's designee or the
13 secretary of transportation or that secretary's designee or a
14 designee of a local public body be unable to negotiate a
15 contract with any of the businesses selected by the committee,
16 additional businesses shall be ranked in order of their
17 qualifications and the secretary or ~~his~~ the secretary's
18 designee or the secretary of transportation or that secretary's
19 designee or the designee of a local public body shall continue
20 negotiations in accordance with this section until a contract
21 is signed with a qualified business or the procurement process
22 is terminated and a new request for proposals is initiated.
23 The secretary or the secretary of transportation or the
24 representative of a local public body shall publicly announce
25 the business selected for award."

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1 Section 15. Section 13-1-135.1 NMSA 1978 (being Laws
2 1995, Chapter 60, Section 2) is amended to read:

3 "13-1-135.1. RECYCLED CONTENT GOODS--COOPERATIVE
4 PROCUREMENT.--

5 A. Beginning July 1, 1995, each central purchasing
6 office shall, whenever its price, quality, quantity,
7 availability and delivery requirements are met, purchase
8 recycled content goods through contracts established by the
9 purchasing division of the [~~general services~~] department of
10 finance and administration or with other central purchasing
11 offices.

12 B. For purposes of this section, "recycled content
13 goods" means supplies and materials composed in whole or in
14 part of recycled materials; provided that the recycled
15 materials content meets or exceeds the minimum content
16 standards required by bid specifications."

17 Section 16. Section 13-1C-3 NMSA 1978 (being Laws 2005,
18 Chapter 334, Section 3) is amended to read:

19 "13-1C-3. DEFINITIONS.--As used in the State Use Act:

20 A. "central nonprofit agency" means a nonprofit
21 agency approved pursuant to rules of the council to facilitate
22 the equitable distribution of orders for the services of:

23 (1) qualified individuals; and

24 (2) community rehabilitation programs;

25 B. "community rehabilitation program" means a

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1 nonprofit entity:

2 (1) that is organized under the laws of the
3 United States or this state, operated in the interest of
4 persons with disabilities and operated so that no part of the
5 income of which inures to the benefit of any shareholder or
6 other person;

7 (2) that complies with applicable occupational
8 health and safety standards as required by federal or state
9 law; and

10 (3) that, in the provision of services,
11 whether or not procured under the State Use Act, employs during
12 the state fiscal year at least seventy-five percent persons
13 with disabilities in direct labor for the provision of
14 services;

15 C. "council" means the New Mexico council for
16 purchasing from persons with disabilities;

17 D. "direct labor" means all work directly relating
18 to the provision of services, but not work required for or
19 relating to supervision, administration or inspection;

20 E. "local public body" means a political
21 subdivision of the state and the political subdivision's
22 agencies, instrumentalities and institutions;

23 F. "persons with disabilities" means persons who
24 have a mental or physical impairment that constitutes or
25 results in a substantial impediment to employment as defined by

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1 the federal Rehabilitation Act of 1973;

2 G. "qualified individual" means a person with a
3 disability who is a business owner, or a business that is
4 primarily owned and operated by persons with disabilities that
5 employs at least seventy-five percent persons with disabilities
6 in the provision of direct labor, which has been approved by
7 the council to provide services to state agencies and local
8 public bodies. A person who is receiving services pursuant to
9 an individualized plan of employment from the vocational
10 rehabilitation division of the public education department or
11 from the commission for the blind shall be presumed to be a
12 person with disability, as shall a person who is receiving
13 supplemental security income or social security benefits based
14 on disability;

15 H. "state agency" means a department, commission,
16 council, board, committee, institution, legislative body,
17 agency, government corporation, educational institution or
18 official of the executive, legislative or judicial branch of
19 government of this state; and

20 I. "state purchasing agent" means the director of
21 the purchasing division of the [~~general services~~] department of
22 finance and administration."

23 Section 17. Section 33-8-6 NMSA 1978 (being Laws 1981,
24 Chapter 127, Section 6, as amended) is amended to read:

25 "33-8-6. COMMISSION--POWERS AND DUTIES.--The commission
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1 has the following powers and duties to:

2 A. determine those enterprises to be conducted in
3 facilities in such volume, kind and place as to eliminate
4 unnecessary inmate idleness at all facilities and to provide
5 diversified work activities that will serve as a means of
6 enhancing vocational skills;

7 B. determine whether any enterprise should be
8 established, expanded, diminished or discontinued;

9 C. establish policy with respect to the conduct of
10 all enterprises;

11 D. approve the prices at which all services and
12 products provided, manufactured, produced or harvested by
13 enterprises shall be furnished; provided that the prices shall
14 be as near the prevailing market price as possible. As used in
15 this subsection, "prevailing market price" means the prevailing
16 price that an equivalent product or service would have if
17 purchased by a state agency or local public body from community
18 sources. The commission shall include data provided by the
19 purchasing division of the [~~general services~~] department of
20 finance and administration in the price determination process.
21 Compensation paid to inmates shall be included as an item of
22 the cost in fixing prices;

23 E. consult regularly and continuously with state
24 agencies and local public bodies in order to develop new
25 enterprise products, adapt existing enterprise products and

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1 establish new service functions to meet their needs;

2 F. act as liaison with private industry, organized
3 labor, the legislature and the general public;

4 G. obtain and provide technical assistance for
5 enterprise programs;

6 H. hold meetings at such times and for such periods
7 as it deems essential, but not less than quarterly;

8 I. recommend to the department the adoption of
9 rules necessary to carry out the provisions of the Corrections
10 Industries Act;

11 J. notwithstanding any other provision of law,
12 adopt policies and procedures that permit an enterprise to make
13 a single purchase of raw materials involving the expenditure of
14 twelve thousand dollars (\$12,000) or less without bids and at
15 the best obtainable price whether or not the provider is the
16 holder of a preexisting state contract for the particular
17 product. Records of such purchases shall be maintained for
18 auditor's inspection and reported at the next scheduled
19 commission meeting. Separate purchases of the same or similar
20 materials from the same or different suppliers at the same time
21 or about the same time where each purchase does not exceed
22 twelve thousand dollars (\$12,000), but the aggregate of such
23 purchases exceeds twelve thousand dollars (\$12,000), shall be
24 considered a single purchase involving more than twelve
25 thousand dollars (\$12,000);

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1 K. notwithstanding any other provision of law,
2 adopt policies and procedures that permit an enterprise to make
3 a single purchase of a product or service other than raw
4 materials involving the expenditure of two thousand dollars
5 (\$2,000) or less without bids and at the best obtainable price
6 whether or not the provider is the holder of a preexisting
7 state contract for the particular product or service. Records
8 of such purchases shall be maintained for auditor's inspection
9 and reported at the next scheduled commission meeting.

10 Separate purchases of the same or similar materials or services
11 from the same or different suppliers at the same time or about
12 the same time where each purchase does not exceed two thousand
13 dollars (\$2,000), but the aggregate of such purchases exceeds
14 two thousand dollars (\$2,000), shall be considered a single
15 purchase involving more than two thousand dollars (\$2,000);

16 L. review, approve, adopt and monitor an annual
17 budget for all enterprises. The budget process shall include a
18 projected profit analysis, sales forecast and anticipated year-
19 end financial forecast;

20 M. submit and recommend the names of one or more
21 qualified individuals to the secretary of corrections for
22 appointment as director of the corrections industries division;

23 N. advise the director of the corrections
24 industries division in the management and control of the
25 corrections industries division;

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1 O. assist in the process of inmate occupational
2 placement upon release from confinement by coordination with
3 the parole board and the field services division; and

4 P. prepare an annual report to the governor and the
5 legislature that contains:

6 (1) a detailed financial statement for each
7 enterprise in each facility;

8 (2) a detailed financial statement of the
9 fund;

10 (3) reasons for establishing or terminating
11 enterprises;

12 (4) a summary of plans to develop additional
13 enterprises;

14 (5) the number of inmates employed in each
15 enterprise;

16 (6) the number of idle inmates available for
17 work at each facility; and

18 (7) any further information requested by the
19 governor or the legislature."

20 Section 18. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
21 PROPERTY, CONTRACTS AND REFERENCES IN LAW AND RULES.--On July
22 1, 2009:

23 A. all personnel of the purchasing division of the
24 general services department are transferred to the department
25 of finance and administration;

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underscoring material = new
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1 B. all appropriations, money, records, property,
2 equipment and supplies of the purchasing division of the
3 general services department are transferred to the department
4 of finance and administration;

5 C. all contracts, grants, agreements and other
6 obligations of the general services department relating to the
7 purchasing division are transferred to and binding on the
8 department of finance and administration;

9 D. all references in law and rules to the
10 purchasing division of the general services department shall be
11 deemed to be references to the purchasing division of the
12 department of finance and administration;

13 E. all rules of the general services department
14 pertaining to the purchasing division of the general services
15 department shall be considered rules of the department of
16 finance and administration pertaining to the purchasing
17 division of the department of finance and administration;

18 F. all personnel of the state personnel office are
19 transferred to the department of finance and administration;

20 G. all appropriations, money, records, property,
21 equipment and supplies of the state personnel office and
22 personnel board, and of the general services department that
23 are being used by the state personnel office or personnel
24 board, are transferred to the department of finance and
25 administration;

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